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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 306

CARSON PETROLEUM COMPANY,

Petitioner,

versus

LEON C. VIAL, SHERIFF AND TAX COLLECTOR OF THE PARISH OF ST. CHARLES; R. H. DeBROCA, ASSESSOR FOR THE PARISH OF ST. CHARLES, ET AL.

On Writ of Certiorari to the Supreme Court of the United States.

PETITION AND BRIEF FOR REHEARING.

HARRY P. SNEED,
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A. P. FRYMIRE,
R. R. RAMOS,
C. S. LAGARDE,
Of Counsel.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles; Ralph A. Dubroca,

Assessor for the Parish of St. Charles, and the Louisiana Tax Commission, defendants and respondents in the above entitled cause, with respect represents:

That the opinion and decree herein handed down April eighth, 1929, reversing the judgment of the Supreme Court of Louisiana is erroneous, contrary to the law and evidence and prejudicial to the rights of petitioners, and that a rehearing should be granted herein for the following reasons, to-wit:

(1) That this Honorable Court erred in holding that the oil herein assessed had not acquired a situs in Louisiana for the purpose of taxation, the said oil being completely at rest at an assembling point in said state, wholly under control of its owner, in the hands of no agency by which transit could be effected, and awaiting the will and ability of the owner to determine the extent of cargoes and destinations and to prepare shipments.

(2) That this Honorable Court erred in adopting for the purposes of a decision herein *dicta* in rate cases which, so far as pertains to the case at bar, can only be *obiter dicta*, and in disregarding decisions in tax cases which should be controlling herein.

BRIEF.

Your Honors, in commenting on the decision in *General Oil Co. v. Cain, 209 U. S., 211*, say: "There has been a liberal construction of what is continuity of the journey, in cases where the Court finds from the circumstances that export trade has been actually intended and carried through." But with great respect, we ask if that liberality

has extended or can extend so as to limit a state's power to assess for taxation property, which, irrespective of the owner's intention as to its ultimate disposition, has acquired a tax situs in the state?

The decisions upon which the Court has based its opinion do not, we submit, so indicate. With the exception of *Spaulding Bros. v. Edwards, 262 U. S., 66, 70,* the opinions upon which your Honors' decision is founded are in **rate** cases, and the excepted case concerned a sale or broker's tax levied by the United States Government. The right of a state to tax property is in no way restricted by the decisions cited, but, on the contrary, the decisions themselves demonstrate their inapplicability to the case at bar.

In *Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S., 498,* cited by your Honors, this court said:

"The **manufacture or concentration** on the wharves of the Terminal Company are but incidents," and were held not to be a sufficient interruption in transit to prevent the fixing of freight rates by the Interstate Commerce Commission. But would your Honors say for a moment that the stoppage of goods in order to allow them to **undergo a manufacturing process** would be insufficient to give them a tax situs in the state where the manufacturing operations are carried on? Certainly an affirmative answer would run counter to every decision of this court on the subject as hereinafter shown.

And, in the *Texas & New Orleans R. R. v. Sabine Tram Company* decision, *227 U. S., 111,* the court itself

points out the distinction between rate cases and tax cases in this regard when it says:

"Nor was there a break in **the sense of the interstate commerce law and the cited cases,** in the continuity of the transportation of the lumber to foreign countries by the delay and its tran-shipment at Sabine. *Swift & Company v. United States, 196 U. S., 375.* Nor, as we have seen, did the absence of a definite foreign destination alter the character of the shipments." By its reference to the *Swift* case the court beyond the shadow of a doubt meant to reiterate:

"But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissable necessarily is beyond the scope of interference by Congress," etc. So the right of the State of Louisiana to tax the oil herein involved did not preclude the fixing of railroad rates concerning it by the Interstate Tax Commission, and, *a fortiori*, the fixing of freight rates concerning the oil by the Commission did not prevent the taxation by the State of Louisiana of such portion of the shipments as were at rest in that state.

There is, we submit, no conflict between the decisions in the rate cases and those in the tax cases hereinafter cited. The ultimate intention of the owner may be the test in rate cases; indeed, the decisions strongly so incline.

In tax cases, however, it is not so because:

"The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty of exportation of a product or article

from a State determines it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from State jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other States, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production."

Heisler v. Thomas Colliery Company, 260 U. S., 244.

There is nothing novel or unique about the tax herein imposed by the State of Louisiana. In every state where the general property tax prevails a similar assessment would be made. The *quantum* of the assessment is manifestly just when it is remembered that it takes from forty five to ninety days to assemble enough oil to make up a cargo (R. 9) and fifty tankers per year constitute the limit of a year's shipments (R. 15). Certainly not less than sufficient oil to make up three cargoes is on hand at all times in St. Rose, enjoying all the protection the State can give, **not entered with a carrier nor any transit agency,** but awaiting the will of its holder and owner as to its ultimate disposition.

The case of *General Oil Co. v. Crain, 209 U. S., 211,* does not stand alone. While the facts in that case are more similar to the facts in the case at bar than are those in other cases cited, the principle therein enunciated differs in no manner from that laid down by this court in a long line of decisions.

In *Bacon v. Illinois, 227 U. S., 504,* your Honors said:

> "But neither the fact that the grain had come from outside the State nor the intention of the owner to send it to another State and there to dispose of it can be deemed controlling when the taxing power of the State of Illinois is concerned. The property was held by the plaintiff in error in Chicago for his own purposes and with full power of disposition. It was not being actually transported and it was not held by carriers for transportation. The plaintiff in error had withdrawn it from the carriers. The purpose of the withdrawal did not alter the fact that it had ceased to be transported and had been placed in his hands. He had the privilege of continuing the transportation under the shipping contracts, but of this he might avail himself or not as he chose. He might sell the grain in Illinois or forward it as he saw fit. It was in his possession with the control of absolute ownership. He intended to forward the grain after it had been inspected, graded, etc., but this intention, while the grain remained in his keeping and before it had been actually committed to the carriers for transportation, did not make it immune from local taxation. He had established a local facility in Chicago for his own benefit and while, through its employment, the grain was there at rest, there was no reason why it should not be included with his other property within the State in an assessment for taxation which was made in the usual way without discrimination."

It must be remembered that, according to the facts as found by the Supreme Court of Louisiana and by this Court, that the oil here assessed had been withdrawn from carriers, was not even in a public warehouse, but in the owner's own storage tanks; had not been segregated in any manner, but was as completely under the Carson Petroleum Company's control as the grain was under the owner's control in the *Bacon* case.

And the Court, in *Champlain Realty Company v. Brattleboro, 260 U. S., 375*, reviewing the *Crain* case, said:

> "So, in General Oil Co. v. Crain, 209 U. S., 211 (52 L. Ed., 754, 28 Sup. Ct. Rep., 475), the Oil Company had its principal place of business in Memphis, Tennessee, for the manufacture and sale of illuminating oils in interstate commerce. It imported oil from other States and put it into a tank, appropriately marked for distribution in smaller vessels to fill orders for oil already sold in Arkansas, Louisiana and Mississippi. The Court held that the first shipment had ended; that its storage at Memphis for division and distribution to various points was for the business purposes and profit of the company. The Court continued: 'It was only there for distribution, it is said, to fulfil orders already received. But to do this required that the property be given a locality in the State beyond a mere halting in its transportation.' (Page 231). The tank at Memphis thus became a depot in its oil business for preparing the oil for another interstate journey. So far as it bears upon this case, the American Steel & Wire Co. v. Speed, 192 U. S.,500, 48 La. Ed., 538, 24 Sup. Ct. Rep., 365, presented a similar state of facts and ruling."

In *Coe v. Errol, 116 U. S., 517*, Mr. Justice Bradley, in delivering the opinion of the Court, asks the question:

> "Do the owners state of mind in relation to the goods, that is his intent to export them, and his partial preparation so to do, exempt them from taxation?"

The answer was in the negative and for unassailable reasons.

The owner in the case at bar undoubtedly intended to export the oil from the concentration depot at St. Rose. Indeed, he had more orders for oil than was on hand. But he had done nothing more than to concentrate oil at a convenient place. He had not yet even determined the quantities of any prospective shipments. No buyer who had contracted for oil could go to St. Rose point to a storage tank or group of tanks and say, "My oil is here, my ship is at the dock, load it." Had a buyer attempted to do so, plaintiff would have been forced to answer: "I have no particular oil on its way to you. Your order is but one of many which I am trying to fill as rapidly as possible. I do not yet even know how much oil I am going to let you have. I must first 'measure your ship off' and determine her capacity; I may insist on your taking ten per cent more than your order, or I may have to give you ten per cent less."

Where we ask, with all deference, is such continuity of this shipment of oil from the mid-continent refineries to the foreign port as would relieve it from state taxation?

Counsel herein fully appreciate their temerity in suggesting error to so august a tribunal. They do so with all deference, but with the fervor of conviction that this honorable court has erred in applying to the decision in a tax case *dicta* which in such a matter can only be *obiter dicta;* which results in the overruling of every germane case and in denying to the State of Louisiana and by the precedent which the decision will establish to the other states of the union, their greatest attribute of sovereignty—the right to tax property at rest within their jurisdiction.

WHEREFORE your petitioners pray that a rehearing be granted herein, and that after due proceedings had, the opinion and decree herein handed down and rendered on the eighth of April, 1929, be recalled and the judgment of the Supreme Court of Louisiana be affirmed.

HARRY P. SNEED,
Attorney for Petitioners.

A. P. FRYMIRE,
R. R. RAMOS,
S. S. LAGARDE,
Of Counsel.

I, Harry P. Sneed, of counsel for petitioners in the foregoing petition for rehearing, do hereby certify that same has not been filed for delay, but in good faith and that I believe same to be well founded.

HARRY P. SNEED.